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10 Chapter 7 Trustee

11 **UNITED STATES BANKRUPTCY COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**
13 **SACRAMENTO DIVISION**

14 In re:

15 **EDWARD S. SOUZA, and**
16 **JUDY L. SOUZA,**

17 Debtors.

Case No. 10-53584-C-7
Chapter 7

DCN: DNL-2

Date: December 20, 2011
Time: 9:30 a.m.
Place: 501 I Street, 6th Floor
Courtroom 35; Dept. C
Sacramento, CA 95814

18 **MOTION FOR TURNOVER**

19 Chapter 7 trustee DOUGLAS M. WHATLEY ("Trustee"), in his capacity as Chapter 7
20 trustee of the bankruptcy estate of EDWARD S. SOUZA and JUDY L. SOUZA (collectively
21 "Debtors"), hereby moves for an order compelling the Debtors to turn over all documents relating
22 to the Debtors' interest in the Katherine P. Souza Revocable Trust ("Souza Trust"), including, but
23 not limited to, documentation of the following: (1) the original Souza Trust and all subsequent
24 amendments; (2) identification and contact information for the current trustee(s) of the Souza Trust;
25 (3) evidence of the date of death of Katherine P. Souza; (4) information concerning all assets of the
26 Souza Trust, including certain real property generally described as 14555 Volcano Pioneer Road,
27 Pioneer, California ("14555 Volcano Pioneer Road"), and any funds held in deposit for
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1 improvements to 14555 Volcano Pioneer Road, or otherwise; and (5) information concerning all
2 distributions and accountings rendered under the Souza Trust. In support of his motion, Trustee
3 submits the following:

4 **JURISDICTION AND BACKGROUND**

5 1. Jurisdiction for this motion exists pursuant to 11 U.S.C. Section 1334; 11 U.S.C.
6 Section 157(b)(2)(E); and 11 U.S.C. Section 542(a). Venue is proper pursuant to 28 U.S.C. Section
7 1409(a).

8 2. On December 24, 2010, the Debtors commenced the above-captioned bankruptcy
9 case by filing a voluntary Chapter 7 petition.

10 3. Trustee is the duly appointed trustee of the Debtors' bankruptcy estate.

11 4. Among the scheduled assets of the Debtors' bankruptcy estate is the Debtors' 20%
12 interest in the Souza Trust. The Debtors' Schedule B lists the value of the Debtors' interest in the
13 Souza Trust as \$25,403.20 (i.e. 20% of \$127,016.00), and the Debtors' Schedule C asserts an
14 exemption in the Souza Trust in the amount of \$16,051.00, pursuant to California Code of Civil
15 Procedure Section 703.140(b)(5)("Wild Card").

16 5. Since March 2010, through his legal counsel, Trustee has repeatedly demanded that
17 the Debtors turn over all documents relating to the Debtors' interest in the Souza Trust, including,
18 but not limited to, documentation of the following: (1) the original Souza Trust and all subsequent
19 amendments; (2) identification and contact information for the current trustee(s) of the Souza Trust;
20 (3) evidence of the date of death of Katherine P. Souza; (4) information concerning all assets of the
21 Souza Trust, including 14555 Volcano Pioneer Road, and any funds held in deposit for
22 improvements to 14555 Volcano Pioneer Road, or otherwise; and (5) information concerning all
23 distributions and accountings rendered under the Souza Trust.

24 6. To date, despite Trustee's repeated demands, the Debtors have only turned over the
25 following documents: (1) a two page document that appears to be a copy of the Last Will and
26 Testament of Katherine P. Souza, dated August 23, 1993; and (2) a three page document that appears
27 to be a copy of Exhibit B to the Souza Trust, dated August 23, 1993.


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8. The Debtors' interest in the Souza Trust is property of the Debtors' bankruptcy estate that Trustee may sell for the benefit of estate creditors. 11 U.S.C. § 541(a)(1); 11 U.S.C. § 363. The Debtors have made no claim that their interest in the Trust is excluded from the bankruptcy estate through the provisions of a spendthrift trust or otherwise; rather, the Debtors have scheduled their interest in the Souza Trust as an asset of the bankruptcy estate and claimed a partial exemption in the same. Thus, since the Debtors' interest in the Souza Trust is not of inconsequential value or benefit to the estate, the Debtors are obligated to deliver to Trustee, and account for, such property or the value of such property, and deliver to Trustee all related documents so Trustee can evaluate the bankruptcy estate's interest in the Souza Trust. 11 U.S.C. § 542(a).

WHEREFORE, Trustee prays that the motion be granted, and for such other and further relief as is necessary and proper.

DESMOND, NOLAN, LIVAICH & CUNNINGHAM

By: 
J. LUKE HENDRIX
 Attorneys for Douglas M. Whatley
 Chapter 7 Trustee